



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 19, 2022

IN THE MATTER OF:

Appeal Board No. 623876

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 623875 and 623876, the claimant appeals from the decisions of the Administrative Law Judge filed May 13, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020 through January 17, 2021, and effective January 18, 2012 through April 18, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,950.50 in regular benefits and \$3,442.50 in extended benefits recoverable pursuant to Labor Law § 597 (4); and charging the claimant with an overpayment of Pandemic

Emergency Unemployment Compensation (PEUC) of \$4,475.25 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board No. 623877, the claimant appeals from the decision of the Administrative Law Judge filed May 13, 2022, which overruled the initial determinations reducing the claimant's right to receive future benefits by 90 effective days and charging a civil penalty of \$2,220.41; and reducing the claimant's right to receive future benefits by 18 effective days and charging a civil penalty of \$309.82 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board No. 623877, an appeal by the claimant was processed to the Appeal Board.

It now appears that the appeal was processed through inadvertence. Since the Judge's decision is not adverse to the appellant's interest, the appellant has

no standing to appeal from that decision.

Now, based on all of the foregoing, it is

ORDERED, that the appeal in Appeal Board No. 623877 is dismissed; and it is further

ORDERED, that the decision of the Administrative Law Judge with respect to the issue of willful misrepresentation to obtain benefits in Appeal Board No. 623877 continues in effect.

With respect to Appeal Board Nos. 623875 and 623876, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for benefits on April 1, 2020, made effective March 16, 2020; she established a weekly benefit rate of \$459. The claimant has worked for the employer herein as a part-time home care assistant since December 2018; she routinely works four hours per day on three days per week for a total of 12 hours per week. During the period of February 11, 2021 to April 18, 2021, the claimant worked a total of 12 hours each week.

The claimant certified for benefits on February 14, February 21, February 28, March 7, March 14, March 21, March 28, April 4, April 11, and April 18, 2021 and with each certification, she reported that she had not worked in the prior week. The claimant received the regular, extended, and PEUC benefits herein at issue. The initial determinations of lack of total unemployment and recoverable overpayment bore a date mailed of "February 11, 2022".

OPINION: Pursuant to Labor Law § 597.3, any determination regarding a benefit

claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information. As the Department of Labor issued the initial determinations herein on February 11, 2022, a determination of willful misrepresentation is required to provide the authority for the Department of Labor to review the claim prior to February 11, 2021. Since the willful misrepresentation determinations which were issued with these matters have been overruled, the Department of Labor lacks jurisdiction to review the period of March 23, 2020 through February 10, 2021 and may only review the claim back to February 11, 2021.

Turning now to the period of February 11, 2021 to April 18, 2021, the evidence establishes that the claimant worked 12 hours each week. Pursuant to 12 NYCRR § 470.2 (h), a claimant who works 12 hours in a week is deemed to have worked

two effective days in that week. Accordingly, the claimant worked the equivalent of two effective days in each statutory week during the period from February 11, 2021 to April 18, 2021 and is ineligible for benefits on any day that she worked. As such, the claimant was overpaid benefits for two effective days in each statutory week which fell in that period. Any PEUC benefits paid for days on which the claimant worked in those statutory weeks are automatically recoverable pursuant to federal law since the claimant was not entitled to receive those benefits.

The claimant conceded that with each certification at issue, she reported that she did not work. Since she worked for 12 hours each week, her certifications reporting that she did not work constitute factually false statements. Accordingly, any regular or extended benefits she received for days on which she worked in the statutory weeks from February 11, 2021 to April 18, 2021 are also recoverable.

The matters in Appeal Board Nos. 623875 and 623876 are referred back to the Department of Labor for recalculation of the recoverable overpayments in accordance with these decisions.

DECISION: The claimant's appeal in Appeal Board No. 623877 is dismissed.

In Appeal Board No. 623877, the decision of the Administrative Law Judge which overruled the initial determinations reducing the claimant's right to receive future benefits by 90 effective days and charging a civil penalty of \$2,220.41; and reducing the claimant's right to receive future benefits by 18 effective days and charging a civil penalty of \$309.82 on the basis that the claimant made willful misrepresentations to obtain benefits, is continued in effect.

In Appeal Board No. 623875, the initial determinations, holding the claimant ineligible to receive benefits, effective March 23, 2020 through January 17, 2021, and effective January 18, 2012 through April 18, 2021, on the basis that the claimant was not totally unemployed, are modified to be effective February 11, 2021 through April 18, 2021, and, as so modified, are sustained.

In Appeal Board No. 623876, the initial determinations, charging the claimant with an overpayment of \$8,950.50 in regular benefits and \$3,442.50 in extended benefits recoverable pursuant to Labor Law § 597 (4); and charging the

claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$4,475.25 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are referred back to the Department of Labor for recalculation in accordance with these decisions.

The claimant is denied benefits with respect to the issues decided herein.
(????????????????)

JUNE F. O'NEILL, MEMBER